

**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-02-CG-104
	)	
Cornbelt Broadcasting Co.	)	NAL/Acct. No. 200232320006
Licensee: WHOW and WHOW-FM	)	
Clinton, Illinois	)	FRN: 0003-7736-94

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: June 18, 2002**

By the District Director, Chicago Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Cornbelt Broadcasting Co. ("Cornbelt"), licensee of AM broadcast station WHOW and FM broadcast station WHOW-FM, has apparently violated sections 11.35(a), 17.4(g), and 73.49 of the Commission Rules (the "Rules")<sup>1</sup>. Cornbelt failed to have an operational Emergency Alert System ("EAS") decoder; failed to display the Antenna Structure Registration ("ASR") number, and failed to comply with AM tower base fencing requirements. We conclude that Cornbelt is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000).

**II. BACKGROUND**

2. On February 25, 2001, the Commission received a complaint alleging Radio Stations WHOW and WHOW-FM were operating in violation of various FCC Rules.

3. On April 25, 2001, an engineer from the Commission's Chicago Office inspected broadcast stations WHOW and WHOW-FM, and observed the following violations:

- (a.) The stations' EAS equipment was not operational. Further, station personnel failed to make entries in the stations' logs indicating the cause of failure to receive EAS tests and activations.
- (b.) The ASR number was not posted.
- (c.) Radio station WHOW failed to enclose the base of the tower with adequate fencing. The front and back doors to the antenna's tuning hut were not attached, permitting unrestricted access to the tower.

Some of the other violations noted during the inspections of WHOW and WHOW-FM were that:

- (a.) The stations failed to have a letter designating the chief operator.
- (b.) The stations failed to have the manual titled "The Public and Broadcasting" in the public inspection file.
- (c.) The stations failed to have the current issues and programs list in the public inspection

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<sup>1</sup> 47 C.F.R. §§ 11.35(a), 17.4(g), and 73.49.

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- file. The latest issues and programs list available was for the third quarter of 1990.
- (d.) WHOW did not have equipment performance measurements for the years 1999 and 2000.

4. On May 7, 2001, the Chicago Office issued Notices of Violation to Cornbelt Broadcasting Co., licensee of WHOW and WHOW-FM. The Notices cited Cornbelt for failure to have an operational EAS decoder, failure to post the ASR number, failure to enclose the base of the tower with adequate fencing, failure to calculate power by the direct method, failure to designate a chief operator, failure to have the most recent ownership report, failure to the current manual titled "The Public and Broadcasting", failure to have the current issues and programs list, failure to determine the FM transmitter efficiency factor, failure to notify the Commission of the operation at reduced power, failure to have equipment performance measurements.<sup>2</sup> Cornbelt failed to respond to the Notices.

5. On February 27, 2002, an engineer from the Commission's Chicago Office inspected broadcast stations WHOW and WHOW-FM, and observed the following violations:

- (a.) The stations' EAS equipment was not operational. Further, station personnel failed to make entries in the stations' logs indicating the cause of their failure to receive EAS tests and activations.
- (b.) The ASR number was not posted at the base of the tower.
- (c.) Cornbelt failed to enclose the base of the WHOW tower with adequate fencing. The front and back doors to the antenna's tuning hut were not attached, permitting unrestricted access to the tower. Further, the chain-link fence around the tower had fallen over.

Other violations noted during the inspections on February 27, 2002 of WHOW and WHOW-FM were:

- (a.) Radio station WHOW did not have equipment performance measurements for the years 2000 and 2001.
- (b.) The stations did not have a copy of the EAS Operating Handbook at the normal duty position.
- (c.) The stations did not have a letter designating the chief operator.
- (d.) The stations did not have a copy of the manual "Public and Broadcasting" in the public file.
- (e.) The stations did not have a current list of issues and programs that have provided the stations' most significant treatment of community interest in the public file. The most recent issues and programs list available was from 1995.

### III. DISCUSSION

6. Section 11.35(b) of the Rules requires that broadcast stations have EAS equipment installed and operational at all times the station is in operation. Additionally, broadcast stations must determine the cause of any failure to receive the required EAS tests or activations and make appropriate entries in the broadcast station log. Section 17.4(g) of the Rules requires the antenna structure registration number to be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Section 73.49 of the Rules requires that licensees enclose any AM tower with radio frequency potential at the base within an effective locked fence or other enclosure.

7. The Commission assesses monetary forfeitures pursuant to Section 503(b) of the

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<sup>2</sup> 47 C.F.R. §§ 73.51, 73.1870(a), 73.3526(e)(5), 73.3526(e)(8), 73.3526(e)(73.51(e)(2), 73.1560(d), and 73.1590(a)(6)

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Communications Act of 1934, as amended, (the “Act”) as implemented in Section 1.80 of the Rules<sup>3</sup>. A forfeiture may be assessed against a person who the Commission finds to have willfully<sup>4</sup> or repeatedly<sup>5</sup> failed to comply with the provisions of the Act or the Rules. Forfeiture amounts are decided in accordance with Section 503(b)(2) of the Act<sup>6</sup> and the Commission’s forfeiture guidelines in Section 1.80(b)(4) of the Rules<sup>7</sup>.

8. Based on the evidence before us, we find that Cornbelt Broadcasting Co. willfully and repeatedly violated Sections 11.35(b), 17.4(g), and 73.49 of the Rules by failing to have a functioning EAS system, failing to display the registration number near the base of the antenna and failing to provide adequate AM tower fencing. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”)<sup>8</sup>, the base forfeiture amount for failing to have operational EAS equipment is \$8,000. The base forfeiture amount for inadequate AM tower fencing is \$7,000. The *Forfeiture Policy Statement* does not establish a base forfeiture amount for failure to post the antenna structure registration number. The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation<sup>9</sup>. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>10</sup> which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and the statutory factors to the instant case and applying the inflation adjustments, we believe that a seventeen thousand dollars (\$17,000) monetary forfeiture is warranted.

### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>11</sup> and Sections 0.111, 0.311, and 1.80 of the Rules<sup>12</sup>, Cornbelt Broadcasting Co. is hereby NOTIFIED of its

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<sup>3</sup> 47 C.F.R. § 1.80.

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>6</sup> 47 C.F.R. § 503(b)(2).

<sup>7</sup> C.F.R. § 1.80(b)(4).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> See *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>11</sup> 47 U.S.C. § 503(b).

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

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APPARENT LIABILITY FOR A FORFEITURE in the amount of seventeen thousand dollars (\$17,000) for willfully and repeatedly violating Sections 11.35(b), 17.4(g), and 73.49 of the Rules.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Cornbelt Broadcasting Co. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232320006 and FRN 0003-7736-94.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200232320006 and FRN 0003-7736-94.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>13</sup>

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Cornbelt Broadcasting Co., RR2 Box 117M, Clinton, Illinois 61727-9518.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt  
District Director  
Chicago Office

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<sup>13</sup> See 47 C.F.R. § 1.1914.